IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 51 OF 2003

S T A T E
Through Public Prosecutor,
High Court of Bombay at
Panaji. ... Appellant.

VERSUS

Gurudas Naik,
son of Sonu Naik,
resident of House No.16,
Ballimath, Cuncolim,
Goa. ... Respondent.

Mr. S.N. Sardessai, Public Prosecutor for the State/Appellant.

Mr. S.G. Bhobe, Advocate under Legal Aid Scheme for the Respondent.

CORAM: P.V. HARDAS, J.

DATE: 29TH JANUARY, 2004.

ORAL JUDGMENT:

The State being aggrieved by the Judgment of the J.M.F.C., Margao, dated 15th February, 2003 in Criminal Case No.289/S/2001/III, acquitting the respondent/accused for an offence punishable under Sections 279, 337 and 338 of the I.P.C., has filed the present appeal.

2. The facts in brief as are necessary for the decision of the appeal are stated hereunder :-

On 10.10.2001, P.W.2 Gopal was proceeding on his scooter carrying his daughter on the running board of the scooter while his son P.W.5 Sayel was a pillion rider. After P.W.2 Gopal had turned left from a small arterial road on the road from Margao to Benaulim, the accident with the truck driven by the respondent/accused occurred. It was alleged by the prosecution that P.W.2 Gopal and P.W.5 Sayel had suffered injuries. The hurt certificates of P.W.2 Gopal and P.W.5 Sayel are at Exh.15 Colly. P.W.6 Shashikant Dessai, Head Constable attached to the Colva Police Station drew the scene of offence panchanama at Exh.Pw1/A in the presence of P.W.7 Salim Watange. He accordingly filed his complaint at Exh.14, on the basis of which the offence against the accused/respondent came to be registered. The said complaint is at Exh.14. Further to the completion of the investigation a charge-sheet against the respondent/accused came to be filed by P.W.7 Salim.

3. The learned J.M.F.C. vide Exh.7-C explained the particulars of the offence to the accused, who pleaded not guilty and claimed to be tried. The prosecution in support of its case examined seven witnesses, out of which it examined P.W.3 Pritesh and P.W.4 Sandesh as eye witnesses and P.W.2 Gopal and P.W.5 Sayel as injured witnesses. The

learned Magistrate, on consideration of the evidence of the prosecution, acquitted the accused on the grounds :-

(i) That the panch witness P.W.1 Shashi could not be relied upon as he was a stock witness.

(ii) P.W.5 Sayel apart from giving an embroidered version, could not be relied upon as he was the son of P.W.2 Gopal.

(iii) The accident occurred on account of the scooterist coming on the arterial road and may have perhaps lost his balance as he had carried his daughter on the running board of the scooter.

4. There was no evidence about the rash or negligent driving of the respondent/accused. The learned Trial Court while explaining the circumstances appearing against the accused in his statement under Section 313 of Cr.P.C. unfortunately did not put questions to the accused regarding the evidence of P.W.2 Gopal. Only two questions relating to the evidence of P.W.3 and P.W.5 alone were put. In the statement under Section 313 Cr.P.C. there was no reference to the evidence of P.W.4. P.W.4 Sandesh admittedly has been examined as an eye witness to the

incident and has stated about the accident occurring on account of the collision of the truck driven by the respondent/accused. The learned Trial Magistrate seems to have taken the task of putting the questions under section 313 Cr.P.C. to the accused in a very lackadaisical attitude. In respect of the hurt certificates at Exh.15 Colly., it appears that the prosecution did not issue the notice as is contemplated under Section 294 of Cr.P.C., but the learned Judge while recording the evidence of P.W.6 Head Constable Shashikant Dessai seems to have recorded that the Advocate for the accused has given no objection for production. Such cryptic observations do not satisfy the requirement of Section 294 Cr.P.C.

5. Be that as it may, P.W.2 Gopal, P.W.3 Pritesh and P.W.4 Sandesh, speak about the truck driven by the accused coming and dashing on the scooter driven by P.W.2 Gopal. These witnesses speak about the fact that the truck was being driven at a very high speed. Apparently there is no cross-examination or effective cross-examination to whittle down or affect the credibility of what these witnesses have stated. Unfortunately the evidence of P.W.2 Gopal and P.W.4 Sandesh have not been put to the accused in his statement under Section 313 Cr.P.C.

6. Mr. Bhobe, learned counsel appearing on behalf of the accused has placed reliance on the judgment of the Supreme Court in the case of **Sharad Birdhichand Sarda v. State of Maharashtra,** reported in A.I.R. 1984 S.C. 1622. In view of this position, the evidence of P.W.2 Gopal and P.W.4 Sandesh cannot be relied upon.

7. This Court is therefore left with the evidence of P.W.3 Pritesh and P.W.5 Sayel. P.W.3 Pritesh in his evidence states that he was standing outside his shop at the time of accident. The accused had driven his truck at a fast speed. The scooterist i.e. P.W.2 was coming on the main road from the arterial road and the truck gave a dash to the scooterist. P.W.5 Sayel, son of P.W.2 states that P.W.2 was carrying his daughter on the running board of the scooter while he was a pillion rider. According to him after P.W.2 came on the main road from the arterial road, a truck heading towards Benaulim from Margao was in the process of overtaking one cycle and a Scooty and as a result of that gave a dash to the scooter. The sketch of the scene of offence which is placed on record by the prosecution along with the scene of offence panchanama (Exh.Pw1/A) shows that the accident occurred at a place on the road which was 1.5 m. on the left hand side. The

truck and the scooter were coming in the opposite direction. The road is stated to be about 4.50 m. wide. Thus on the right-hand side of the scooter the edge of the road is at a distance of 4 metres. Taking into consideration the width of the road and the width of the truck, it cannot be stated that the truck was being driven in a rash and negligent manner so that it transgressed the dividing line of the road and had come on the other half of the road and had thereby collided with the scooter. Fast speed by itself is no indication that the vehicle is being driven in a rash or negligent manner. Thus there is absolutely no evidence that the vehicle i.e. the truck was being driven by the accused in a rash or negligent manner. It appears that the accident had occurred on account of the truck which was overtaking a cycle and a Scooty. P.W.2 Gopal was coming on to the main road from the arterial road and therefore it was his duty to have seen whether the road was clear for him to approach the main road. Obviously the scooter was not visible to the truck driver as it was coming from the arterial road and therefore it cannot be said that the respondent was negligent in his attempt to overtake the scooter and the cyclist. In view of the matter, according to me since there is no evidence on record to justify an inference that the vehicle was being driven by the accused in either rash or negligent

manner, the accused cannot be held guilty.

8. In view of this, since this is an appeal against acquittal and though the reasons do not commend themselves to me, as there is no evidence to infer that the accused was driving his vehicle in a rash and negligent manner, the appeal is dismissed.

sl. P.V. HARDAS, J.